A.F.R.
17.8.2007

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (C.) No.48 of 2007

Appellant (Non-Applicant No.3)		The New India Assurance Company Limited, Branch Office, Kamthee line, Rajnandgaon (C.G.)
		versus
Respondents (Applicant)	1.	Salikram, S/o Aganuram, aged 30 years, R/o Pendrikala, P.S. & Tah. Khairagarh, District Rajnandgaon (CG)
(Non-Applicant No.1)	2.	Vishnu Sahu, S/o Jhullu Sahu, aged 34 years, Occupation Driver, R/o Darripara, Raipur Naka Kawardha, Distt. Kawardha (CG)
(Non-Applicant No.2)	3.	Deepak, S/o Laxminath Gupta, aged 23 years, (Owner), R/o Hataripara, Santoshi Chowk, Kawardha, Distt. Kawardha (CG)

Appeal under Section 173 of the Motor Vehicles Act, 1988

Present : Shri Dashrath Gupta, counsel for the appellant/insurer.
Shri R.N.Jha, counsel for respondent No.1/claimant.
No one appears on behalf of respondents No.2 and 3 though served.

ORAL ORDER

(Passed on 17th August, 2007)

Heard.

(36)

(2) This appeal is directed against the award dated 13-10-2006 passed by Shri N.D.Ekka, Additional Motor Accidents Claims Tribunal, Khairagarh (henceforth 'the MACT') in Claim Case No.24/2005, whereby the MACT has awarded Rs.2,42,000/- to respondent No.1/claimant for the permanent disability suffered by him due to the accident.

(3) Brief facts are that on 09-08-2005, respondent No.1/claimant was going to his Village Pendri on a cycle. Respondent No.3 drove Sumo vehicle No.CG 09/5003 in a rash and negligent manner and dashed against the cycle of respondent No.1/claimant, who sustained fracture in radius and ulna bones of left fore arm and also sustained a serious head injury. The claimant was admitted in Chandulal Chandrakar Memorial Hospital, Bhilai from 10-08-2005 to 27-08-2005 and incurred heavy expenses in treatment. Operation of the fractured montegra was also performed. The claimant filed the disability certificate and all the relevant documents relating to treatment undertaken and expenses incurred by him. All these documents were exhibited by the MACT during statement of the claimant despite a serious objection raised by the insurance company that unless the doctor granting the disability certificate was examined, the disability certificate could not be exhibited. Taking into consideration the minimum wage prevalent under law, the MACT assessed the daily income of respondent No.1/claimant at Rs.100/- and taking 25 working days in a month, assessed monthly income of respondent No.1/claimant at Rs.2,500/-. Taking permanent disability suffered by

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respondent No.1/claimant at 35%, the MACT assessed compensation as under :

Sl. No.	Heads		Amount (Rs.)
(i)	Loss of earning	=	1,89,000=00
(ii)	Expenses towards treatment	=	30,000=00
(iii)	Special diet during treatment	=	4,000=00
(iv)	Loss of earning	=	9,000=00
(v)	Pain and suffering	=	10,000=00
	TOTAL	=	**2,42,000=00**

(4) Learned counsel for the appellant/insurer has made a two-fold submission in this appeal. Firstly, that the MACT ought to have taken the monthly income of respondent No.1/claimant at Rs.1,500/- in view of the admission made by the claimant in para 12 of his testimony that he was earning Rs.40-50 per day on the date of accident. Secondly, it was urged that without giving the appellant/insurer an opportunity of cross-examining the expert giving disability certificate as also the treating Psychologist or Surgeon, the assessment of the compensation awarded by the MACT could not be sustained under law.

(5) Shri R.N.Jha, learned counsel for respondent No.1/claimant argued in support of the impugned award.

(6) Having considered the rival submissions, I have perused the record.

(7) It is true that the claimant has in para 12 of his testimony admitted before the MACT that he was earning Rs.30-35 per day as an agricultural labourer and after he started working at the petrol pump, the owner of the petrol pump was paying him Rs.40-50 per day as wages. However, it needs to be noticed that the claimant had suffered a serious head injury due to the accident and had undertaken operation of montegra bone and had deposed that there was a complete loss of memory due to the accident. The claimant had also filed a certificate, Ex.P-72 given by the Psychologist, which revealed traces of memory loss due to the accident. The Psychologist, who gave certificate, Ex.P-72, ought to have been examined by the claimant so as to give an opportunity to the insurer to test the genuineness of the document by cross-examining the witness. The testimony of Aganuram Sahu also shows that there was functional imbalance in the mind of the claimant due to the accident. The MACT, while determining the daily income of the claimant, ought to have considered the testimony of the employer Amit Chopra in para 7 giving a detailed description of the functions, which respondent No.1/claimant used to perform at the petrol pump.

(8) The appellant/insurer had raised an objection before the MACT while the disability certificate and other documents were exhibited that the concerned doctor should be examined before exhibiting the documents. A Division Bench of this Court in ***Rajesh Kumar Kaushik*** **vs.** ***Tej Narayan Singh***, Miscellaneous Appeal (C.) No.818/2007 decided on 20-07-2007, has held as under :

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> "If the appellant really wants support from the opinion of any doctor or board of doctors, the Insurance company and the owner of the vehicle, against whom the said opinion will be used, should be given an opportunity to cross-examine those persons for the purpose of ascertaining the truth of their opinion contained in the certificate; it is preposterous to suggest that by mere producing a certificate showing that a person had become disabled, he can force the Insurance Company or the owner of the vehicle to pay compensation though the genuineness of the document is not proved and they are not in a position to cross-examine the person who has allegedly given such opinion."

(9) In ***Rajesh Kumar Kaushik*** v. ***Tej Narayan Singh*** (supra), the Court further held as under:

> "that a duty is cast on the MACT to ensure that process is issued to the doctor concerned issuing certificate of permanent disability and his attendance secured in the Court. Under the Motor Vehicles Act, 1988, the MACT is under an obligation to award just and reasonable compensation and can not shirk its responsibility by taking shelter of the fact that the claimant had failed to examine the doctor issuing the certificate of permanent disability. In most of the cases in Chhattisgarh, the claimants are illiterate and poor villagers and sometimes illiterate widows, minor children etc. The Presiding Judge of the MACT in such cases should take pains to see that process is issued to the doctor concerned, his attendance

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> secured in the Court and the insurer is given opportunity to cross-examine the doctor. The Presiding Judge of the MACT being under an obligation to award just and reasonable compensation should not remain a silent spectator during the proceedings".

(10) In view of the law laid down in ***Rajesh Kumar Kaushik*** **vs.** ***Tej Narayan Singh*** (supra), the impugned award is liable to be set aside. In the interest of justice and to give a fair opportunity to the appellant/insurer to test the genuineness of the certificate of permanent disability and the certificate Ex.P-72 issued by the Psychologist by cross-examining the doctor giving such opinion, it is necessary to remand the matter to the MACT, and to give an opportunity to the appellant/insurer to cross-examine such witnesses.

(11) In view of the above, the appeal is allowed. The impugned award is set aside and the matter is remitted to the MACT. The MACT shall, after complying with the direction in ***Rajesh Kumar Kaushik*** **vs.** ***Tej Narayan Singh*** (supra) quoted in paragraphs 8 and 9, decide expeditiously the quantum of compensation payable to the claimant under Section 166 of the Act, 1988 in accordance with law.

Sd/-
Dilip Raosaheb Deshmukh
Judge

Gopal